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October 13, 2010

The Honorable Jocelyn Boyd
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Joseph Wojcicki (Complainant) v. BellSouth Telecommunications, Inc. d/b/a
AT&T South Carolina (Defendant)
Docket No. 2010-328-C

Dear Ms. Boyd:

Enclosed for filing is AT&T South Carolina's Motion to Dismiss in the above-referenced matter.

As explained in AT&T South Carolina's Motion, even assuming all of the factual allegations in the Complaint are true (as AT&T South Carolina and the Commission are required by law to assume in the context of a Motion to Dismiss), it is clear that the Commission lacks subject matter jurisdiction over the matter alleged in the Complaint. Given the nature of some of those factual allegations, however, AT&T South Carolina respectfully provides the following information outside the context of its Motion to Dismiss.

AT&T South Carolina began installing the Video Ready Access Device ("VRAD") cabinet that is the subject to Mr. Wojicki's Complaint in August 2008. While the VRAD was being installed, Mr. Wojicki raised various concerns, and AT&T South Carolina personnel met with Mr. Wojicki at the site of the VRAD to discuss those concerns with him. Subsequently, in March 2009, AT&T South Carolina informed Mr. Wojicki in writing that:

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The VRAD cabinet is on public rights-of-way near, but not on, his property;

AT&T has, on two separate occasions, verified that the bonding and grounding at the referenced site and is in compliance with AT&T's guidelines and with AT&T's standards for this equipment;

AT&T also has verified that the bonding and grounding complies with the applicable requirements of the National Electric Safety Code and that this application has been approved for this use; and

The site has been inspected by the local county building inspector and is in compliance with the electrical codes of the County and State.

The VRAD that is the subject of Mr. Wojicki's Complaint has been in operation since May 2009 without incident, and AT&T South Carolina is aware of no incidents of the type that apparently concern Mr. Wojicki regarding any of the more than 1,300 of AT&T's VRADs that are in operation in the State of South Carolina. Finally, nothing suggests that the incident in San Bruno, California that Mr. Wojicki references in his complaint was in any way related to any of AT&T's facilities.

By copy of this letter, I am serving all parties of record with a copy of this pleading as indicated on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink that reads "Patrick W. Turner". The signature is written in a cursive style with a long horizontal line extending from the top of the "T".

Patrick W. Turner

PWT/nml
cc: All Parties of Record
854773

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

IN RE:	Joseph Wojcicki,)	
)	
	Complainant/Petitioner,)	Docket No. 2010-328-C
)	
	v.)	
)	
	BellSouth Telecommunications, Inc.)	
	d/b/a AT&T South Carolina,)	
)	
	Defendant/Respondent.)	
)	

MOTION TO DISMISS

BellSouth Telecommunications, Inc. d/b/a/ AT&T South Carolina (“AT&T South Carolina”) respectfully moves the Public Service Commission of South Carolina to dismiss the Complaint in this Docket on the grounds that it lacks subject matter jurisdiction over the matters presented in the Complaint.

I. SUMMARY OF ALLEGATIONS AND RELIEF REQUESTED

In essence, the Complaint alleges that AT&T South Carolina placed a Video Ready Access Device (“VRAD”) cabinet “on and around” Mr. Wojcicki’s property without informing him of “the plan, scope of works, etc.” and without “submitting to [him] any documents or results of safety tests.” He alleges that he is concerned about vague and unsubstantiated potential “hazards” and “risks,” and he asks the Commission to award various relief, apparently including: requiring AT&T South Carolina to insure Mr. Wojcicki’s property and family; deputizing Mr. Wojcicki to lead an investigative team; allowing Mr. Wojcicki to work with various states and possibly Canadian provinces to prevent incidents such as the West Virginia coal mine explosion

and explosions in Texas, on the Gulf of Mexico, and in California; enlisting support from the United State's Attorney's Office; and recalling unspecified AT&T South Carolina installations.

II. ARGUMENT

In considering a motion to dismiss, the Commission must consider only the allegations set forth in the Complaint and presume that they are true as pled. *Overcash v. South Carolina Elec. and Gas Co.*, 614 S.E.2d 619, 619 (S.C. 2005). The Commission must then determine whether it has jurisdiction to grant any relief if those facts were, in fact, proved at a hearing. As explained below, the Commission should dismiss this Complaint because even assuming that each fact alleged in the Complaint were true (which AT&T South Carolina does not concede), the Commission would nonetheless lack jurisdiction to address the Complaint.

In Order No. 92-406, for example, the Commission denied a request to investigate a telephone company's policy regarding the use of easements and rights-of-way on the ground that it lacks jurisdiction to consider the issue.¹ In doing so, the Commission concluded that

while a telephone utility may be subject to the same basic principles of property law as any other entity, the enforcement of those property laws is not within the scope of the Commission's regulation of telephone utilities. In fact, as a creature of statute, the Commission only has authority to regulate the rates and service of telephone utilities.²

¹ Order Denying Request to Investigate, *In Re: Elrod v. Southern Bell Tel. Co.*, Order No. 92-406 in Docket No. 92-297-C (May 26, 1992).

² *Id.* at 2-3. See also Order Denying Petition for Lack of Jurisdiction, *In re: Application of Ashley Oaks Water System, Inc. for Approval of a Transfer of Its Water System to the City of Columbia*, Order No. 2007-753 in Docket No. 2007-41-W at 1 (October 23, 2007) (dismissing a petition addressing a dispute over easements to and ownership of a well used in the operation of a water utility, explaining that "[w]hile there does not appear to be a continuing need for the utility to have an easement to the well . . . , it seems equally apparent that this Commission is not the best forum to determine issues of real property, equipment ownership, or the extinguishment of easements.").

Accordingly, the allegations that AT&T South Carolina placed a VRAD cabinet “on and around” Mr. Wojcicki’s property without informing him of “the plan, scope of works, etc.” and without “submitting to [him] any documents or results of safety tests” present matters that are outside the scope of the Commission’s jurisdiction.

Moreover, while the Complaint suggests that Mr. Wojcicki has concerns regarding the safety of AT&T South Carolina’s VRAD cabinet, it alleges no specific facts which, if proven, would support a conclusion that the VRAD cabinet at issue presents any safety issues. Even if the Complaint did contain such allegations, the Commission would lack jurisdiction to entertain them. By statute, the Commission “must not: (a) impose any requirements related to the terms, conditions, rates, or availability of broadband service; or (b) otherwise regulate broadband services,”³ which by definition includes “any service that is used to deliver video”⁴

And as of the October 1, 2009 effective date of AT&T South Carolina’s election to operate pursuant to S.C. Code Ann. §58-9-576(C), the Commission has jurisdiction over the prices AT&T South Carolina may charge for a specified subset of AT&T South Carolina’s stand-alone basic residential lines.⁵ Otherwise, “the commission must not impose any requirements related to the terms, conditions, rates, or availability of any of [AT&T South Carolina’s] retail services; or otherwise regulate any of [AT&T South Carolina’s] retail services”⁶ As the Complaint clearly does not address the pricing of any AT&T South Carolina services, it raises matters that clearly are outside the scope of the Commission’s jurisdiction.⁷

³ See S.C. Code Ann. §58-9-280(G)(1).

⁴ See S.C. Code Ann. §58-9-10(17).

⁵ See S.C. Code Ann. §58-9-576(C)(2).

⁶ *Id.*, §58-9-576(C)(3).

⁷ See Letter from Office of Regulatory Staff (“ORS”) filed October 4, 2010 (noting that “ORS does not have authority to investigate the above-referenced complaint,” as “ORS reviews only those matters which are within the jurisdiction of the Commission.”).

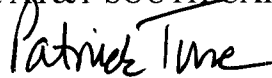
Finally, the Complaint does not (and cannot) cite to any statutes authorizing the Commission to require AT&T South Carolina to insure Mr. Wojcicki's family or property, to investigate incidents occurring in other states, to order the "recall" of any AT&T facilities, or to provide any of the other relief sought in the Complaint.

III. CONCLUSION

For the reasons set forth above, AT&T South Carolina respectfully requests that the Commission dismiss the Complaint for lack of subject matter jurisdiction.

Respectfully submitted this 13th day of October, 2010.

BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T SOUTH CAROLINA



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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina (“AT&T”) and that she has caused the Motion to Dismiss in Docket No. 2010-328-C to be served upon the following on October 13, 2010:

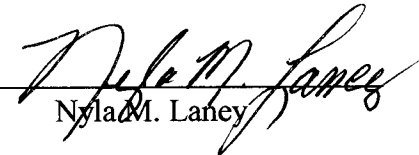
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